

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

LATONIA WOJCIECHOWSKI,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 02-263-KAJ
	)	
	)	
JO ANNE B. BARNHART,	)	
Commissioner of Social Security	)	
	)	
Defendant.	)	

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**MEMORANDUM OPINION**

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Gary L. Smith, Esquire; 1400 Professional Building, Suite 110, Peoples Plaza, Newark, Delaware 19702-5706, counsel for plaintiff.

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April 21, 2004  
Wilmington, Delaware

## **JORDAN, District Judge**

### **I. INTRODUCTION**

Before me is a motion for summary judgment (Docket Item ["D.I."] 12) filed by plaintiff Latonia Wojciechowski ("Wojciechowski"), and a cross motion for summary judgment (D.I. 14), filed by the defendant, the Commissioner of Social Security ("Commissioner"). Wojciechowski brings this action under 42 U.S.C. §§ 405(g), 1383(c)(3), seeking review of the Commissioner's decision denying her disability insurance benefits and supplemental security income under Title II and Title XVI of the Social Security Act ("the Act"), 42 U.S.C. §§ 401-434, 1381-1383f. The court has jurisdiction to review the Commissioner's decision under 42 U.S.C. § 405(g) of the Act.

For the reasons that follow, I will deny Wojciechowski's motion (D.I. 12) and grant the Commissioner's motion (D.I. 14).

### **II. BACKGROUND**

#### **A. Procedural History**

On August 11, 2000 Wojciechowski filed for disability insurance benefits and supplemental security income with the Social Security Administration ("SSA"), alleging an inability to work as of July 14, 2000. (D.I. 13 at 3.) The SSA denied Wojciechowski's claims initially and upon reconsideration. (*Id.*) On August 22, 2001, at Wojciechowski's request, a hearing was held before an Administrative Law Judge ("ALJ"). (*Id.*) At the hearing, a vocational expert and Wojciechowski, represented by counsel, testified. (D.I. 9 at 28.) On August 31, 2001, the ALJ determined that Wojciechowski was able to perform

“a significant range of sedentary work” and thus was not disabled under the Act and its regulations. (*Id.* at 17.)

Wojciechowski then filed a request for review with the SSA’s Appeals Council. (*Id.* at 6.) The Appeals Council found that there was “no basis under the [] regulations for granting” Wojciechowski’s “request for review.” (*Id.* at 4.) The August 31, 2001 decision of the ALJ, therefore, became the final decision of the Commissioner. See 20 C.F.R. §§ 404.955, 404.981, 422.210; see also *Sims v. Apfel*, 530 U.S. 103, 106-107 (2000); *Matthews v. Apfel*, 239 F.3d 589, 592 (3d Cir. 2001). Wojciechowski now seeks review by this court under 42 U.S.C. §§ 405(g), 1383(c)(3). (D.I. 1.)

## B. Facts

Wojciechowski has a high school education. (D.I. 9 at 11.) She has past work experience as a file clerk, a cashier, and a data entry clerk. (*Id.*) Wojciechowski alleges an inability to work as of July 14, 2000 due to “disc herniation in the lumbar spine and cervical spine and bursitis of the right shoulder.”<sup>1</sup> (*Id.*) Wojciechowski claims that her medical problems started in September 1999 and she attributes her injuries to her past work as a data entry clerk which required her to stay in one position and type constantly. (D.I. 9 at 74, 176; D.I. 15 at 3.)

### 1. Medical Evidence

On October 14, 1999, Wojciechowski sought treatment from Dr. Evan Crain for pain in her right shoulder. (D.I. 13 at 4.) Dr. Crain diagnosed Wojciechowski with subacromial

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<sup>1</sup> “Bursitis is painful inflammation of a bursa (a flat sac containing joint [synovial] fluid that reduces friction in areas where skin, muscles, tendons, and ligaments rub over bones).” *The Merck Manual of Medical Information - Second Home Edition*, Section 5, Chapter 74 (2003), available at <http://www.mercksource.com>.

bursitis and a cervical sprain. (*Id.*) On October 25, 1999, Dr. Crain re-examined Wojciechowski and found her to have good strength and a full range of motion. (D.I. 15 at 4.) Dr. Crain also reported that Wojciechowski was capable of working eight hours in a day and lifting up to ten pounds. (*Id.*) Dr. Crain then released Wojciechowski to light duty work. (*Id.*)

From October 1999 to February 2000, Wojciechowski was treated by Dr. James Fusco. (D.I. 13 at 4.) Dr. Fusco, a chiropractor, diagnosed Wojciechowski with cervical sprain and right arm strain. (D.I. 9 at 13.) Dr. Fusco advised Wojciechowski to refrain from working from October 28, 1999 to November 15, 1999. (*Id.*)

On May 9, 2000, Wojciechowski sought treatment from Dr. Anne Mack for pain in her neck, upper back, and right arm. (D.I. 15 at 4.) Dr. Mack ordered an EMG to evaluate the upper extremity for carpal tunnel syndrome or cervical radiculopathy<sup>2</sup>. (D.I. 13 at 5.) The EMG was negative for each. (*Id.*) Dr. Mack also determined that the neurological examination of Wojciechowski revealed that she had a decreased sensation in her upper extremity, her strength was normal and she was capable of working up to four hours per day. (D.I. 9 at 13; D.I. 15 at 4.) Dr. Mack also recommended physical therapy and exercise. (D.I. 15 at 5.)

From May 2000 to August 2000, Wojciechowski was treated by Dr. Kevin McDermott. (D.I. 13 at 5; D.I. 15 at 6.) Dr. McDermott, a chiropractor, opined that Wojciechowski suffered from “an over use syndrome in the neck and right upper extremity

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<sup>2</sup> “Radiculopathy is a disease of the spine in which there is a compression on the nerve roots which result in neural disorders of the lower limbs.” (D.I. 15 at 5); *see Dorland’s Illustrated Medical Dictionary* 1511 (29<sup>th</sup> ed. 2000).

due to the nature of her employment.” (D.I. 9 at 14.) Originally, Dr. McDermott indicated that Wojciechowski was unable to work, but later upgraded her condition. (D.I. 15 at 6.)

On August 31, 2000, a physician<sup>3</sup> from the Delaware Disability Determination Service (“DDDS”) reviewed Wojciechowski’s medical records and determined that she could lift and carry twenty pounds, frequently lift or carry ten pounds, and stand and walk six hours in an eight hour work day. (D.I. 9 at 229.) On January 29, 2001, a physician<sup>4</sup> from DDS again reviewed Wojciechowski’s medical records and reached the same conclusions. (*Id.* at 221.)

On November 7, 2000, Wojciechowski was examined by Dr. Reena Malhotra. (D.I. 9 at 14.) Dr. Malhotra opined that Wojciechowski had “mediated pain” in her right upper extremity and neck, secondary myofascial pain<sup>5</sup>, and mild bursitis of the right shoulder. (*Id.*) Dr. Malhotra also found that Wojciechowski’s behavior suggested “symptom magnification,” and that her strength in her upper and lower extremities appeared normal. (D.I. 15 at 6.) Due to Dr. Malhotra’s findings, Wojciechowski was given a note for work for partial disability indicating that she could not lift more than ten pounds and could not repetitively use her right arm. (D.I. 9 at 14.)

## 2. Vocational Expert Testimony

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<sup>3</sup> The physician’s name is not discernable from the record. (D.I. 9 at 235.)

<sup>4</sup> The physician’s name is not discernable from the record. (D.I. 9 at 227.)

<sup>5</sup> Myofascial pain is a symptom defined as “[a] large group of muscle disorders characterised by the presence of hypersensitive points, called trigger points, within one or more muscles and/or the investing connective tissue together with a syndrome of pain, muscle spasm, tenderness, stiffness, limitation of motion, weakness and occasionally autonomic dysfunction.” *On-Line Medical Dictionary*, Department of Medical Oncology, University of Newcastle upon Tyne (1997), available at <http://cancerweb.ncl.ac.uk/omd/>.

At the August 21, 2001 hearing, the ALJ asked vocational expert Peggy Preno (“Preno”) whether jobs exist for an individual of Wojciechowski’s “age, education, and past work experience who is exertionally capable of lifting ten pounds frequently, sitting, alternating positions, for up to six hours overall in an eight hour workday.” (*Id.* at 15.) And further, Preno was asked to “assume that this person could work repetitively with her upper extremities. However, she is limited nonexertionally in that she can perform only simple, routine, 1-2 step tasks. She cannot do any significant repetitive fine manipulative movements with her dominant right hand.” (*Id.*) Preno testified that a person with that vocational profile could perform numerous jobs in the national economy, such as: (1) call out operator (270 jobs locally, 45,000 nationally); (2) security systems monitor (50 jobs locally, 45,000 nationally); and (3) a charge account clerk (70 jobs locally, 22,000 nationally). (*Id.*)

### C. The ALJ’s Decision

To determine whether a claimant is entitled to disability benefits, an ALJ applies a “sequential five-step inquiry pursuant to 20 C.F.R. § 404.1520[]” . *Morales v. Apfel*, 225 F.3d 310, 316 (3d Cir. 2000); see 20 C.F.R. § 404.1520; *Brewster v. Heckler*, 786 F.2d 581, 583 (3d Cir. 1986). Under that inquiry:

[T]he [ALJ] determines first whether an individual is currently engaged in substantial gainful activity. If that individual is engaged in substantial gainful activity, [she] will be found not disabled regardless of the medical findings. If an individual is found not to be engaged in substantial gainful activity, the [ALJ] will determine whether the medical evidence indicates that the claimant suffers from a severe impairment. If the [ALJ] determines that the claimant suffers from a severe impairment, the [ALJ] will next determine whether the impairment meets or equals the list of impairments in Appendix I of sub-part P of Regulations No. 4 of the Code of Regulations. If the individual

meets or equals the list of impairments, the claimant will be found disabled. If [she] does not, the [ALJ] must determine if the individual is capable of performing [her] past relevant work considering [her] severe impairment. If the [ALJ] determines that the individual is not capable of performing [her] past relevant work, then [the ALJ] must determine whether, considering the claimant's age, education, past work experience and residual functional capacity, [she] is capable of performing other work which exists in the national economy.

*Brewster*, 786 F.2d at 583-584 (internal citations omitted); see *Plummer v. Apfel*, 186 F.3d 422, 428-429 (3d Cir. 1999).

In this case, after applying the five-step evaluation, the ALJ determined that Wojciechowski was not disabled within the meaning of the Act and its regulations. D.I. 9 at 17.) The ALJ first found that Wojciechowski was not engaged in substantial gainful activity. (*Id.* at 16.) Next, the ALJ concluded that Wojciechowski suffered from “disc herniation in the lumbar spine and cervical spine and bursitis of the right shoulder, impairments considered ‘severe’[.]” (*Id.*) However, her impairments were not impairments listed in Appendix I of sub-part P of Regulations No. 4 of the Code of Regulations. (*Id.*) The ALJ then determined that Wojciechowski had “a residual functional capacity to stand/walk up to two hours a day, sit up to six hours a day[,] lift up to ten pounds[]” and “perform a significant range of sedentary work[.]” (*Id.* at 16-17.) However, she was not able to perform her past relevant work. (*Id.* at 16.) As such, the ALJ had to determine, given Wojciechowski's vocational profile (age, education, work experience and residual functional capacity), whether there are a significant number of jobs existing in the national economy that she could perform. (*Id.*); see *Morales*, 225 F.3d at 316. To help make this determination, the ALJ solicited the testimony of a vocational expert. (D.I. 9 at 45.) At the

August 22, 2001 hearing, vocational expert Preno testified that Wojciechowski, given her vocational profile, could work as a call out operator, security systems monitor, and a charge account clerk. (*Id.*) The ALJ then concluded that there are jobs in the national economy that Wojciechowski could perform and, therefore, found her not disabled under the Act and its regulations. (*Id.* at 17.)

### III. STANDARD OF REVIEW

Courts apply plenary review to the Commissioner's application of law. *Markle v. Barnhart*, 324 F.3d 182, 187 (3d Cir. 2003). The Commissioner's findings of fact, however, are reviewed to determine "whether there is substantial evidence to support such findings." *Id.* I am required to review the entire record when making those determinations. *Reefer v. Barnhart*, 326 F.3d 376, 379 (3d Cir. 2003.)

Substantial evidence is defined as "more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (quoting *Consolidated Edison Co. V. NLRB*, 305 U.S. 197, 229 (1938.)) If the Commissioner's decision is supported by substantial evidence, then I am bound by those factual findings. *Plummer*, 186 F.3d at 427.

### IV. DISCUSSION

Wojciechowski submits that the ALJ's decision is not supported by substantial evidence. (D.I. 1.) Specifically, Wojciechowski argues that the ALJ failed to properly evaluate her subjective complaints of pain and, therefore, his decision should be reversed and the case should be remanded for a further hearing. (D.I. 13 at 13.)



Allegations of pain must be supported by objective medical evidence. *Hartranft v. Apfel*, 181 F.3d 358, 362 (3d Cir. 1999); see 20 C.F.R. §§ 404.1529, 416.929. If an ALJ determines that a medical impairment “could reasonably cause” the alleged pain, then the ALJ “must evaluate the intensity and persistence of the pain ... and the extent to which it affects the individual’s ability to work.” *Hartranft*, 181 F.3d at 362. “This obviously requires the ALJ to determine the extent to which a claimant is accurately stating the degree of pain or the extent to which he or she is disabled by it.” *Id.*; see 20 C.F.R. §§ 404.1529, 416.929.

In this case, the ALJ determined that Wojciechowski suffered from severe impairments that could reasonably cause pain and, as such, appropriately evaluated her subjective allegations under 20 C.F.R. §§ 404.1529, 416.929 to determine whether the alleged pain was disabling. (D.I. 9 at 12.) In his evaluation, the ALJ found Wojciechowski’s testimony “to be generally credible regarding her general medical condition, related treatment, and activities of daily living[,]” however, the ALJ determined that Wojciechowski’s allegations of pain were “less than credible” and not supported by the medical evidence. (*Id.* at 13.) The ALJ cited to specific evidence in determining that Wojciechowski’s allegations of pain were not credible, such as: (1) Wojciechowski’s testimony and daily activities questionnaire revealed that her allegations of pain did not preclude her from all social and physical activities; (2) Dr. Mack, after conducting a neurological examination, determined that that Wojciechowski’s strength was normal and she was capable of work for four hours per day; (3) Dr. Malhotra determined that, although Wojciechowski suffered from “mediated pain” in her upper extremities and “mild bursitis” of the right shoulder, she was still capable of lifting up to ten pounds; and (4) The Residual Functional Capacity

Assessments completed by the DDDS physicians<sup>6</sup> indicated that Wojciechowski was capable of light work<sup>7</sup>. (*Id.* at 13-14.) Therefore, the ALJ's finding that Wojciechowski had a maximum exertional capacity for sedentary work<sup>8</sup> and his finding that "any pain ... [she] experience[d] [was] not of such severity as to interfere with the performance of simple, routine, unskilled, sedentary tasks[.]" are supported by substantial evidence and are properly noted by the ALJ in his opinion. (*Id.*)

## V. CONCLUSION

Accordingly, the defendant's motion (D.I. 14) will be granted and the plaintiff's motion (D.I. 12) will be denied. An appropriate order will issue.

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<sup>6</sup> ALJs "are not bound by any findings made by State agency medical ... physicians[.] However, State agency medical ... physicians ... are highly qualified physicians ... who are also experts in Social Security disability evaluation." 20 C.F.R. § 404.1527(f)(2)(I).

<sup>7</sup> "Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time." 20 C.F.R. § 404.1567(b).

<sup>8</sup> "Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met." 20 C.F.R. § 404.1567(a).

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

LATONIA WOJCIECHOWSKI,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 02-263-KAJ
	)	
	)	
JO ANNE B. BARNHART,	)	
Commissioner of Social Security	)	
	)	
Defendant.	)	

ORDER

For the reasons set forth in the Court's Memorandum Opinion of today's date in this matter,

IT IS HEREBY ORDERED that Defendant's motion for summary judgment (D.I. 14) is GRANTED, and the Plaintiff's motion for summary judgment (D.I. 12) is DENIED.

Kent A. Jordan  
UNITED STATES DISTRICT JUDGE

April 21, 2004  
Wilmington, Delaware